

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1739 - SB 2652

February 16, 2018

SUMMARY OF BILL: Requires state agencies, other than institutions of postsecondary and higher education to, prior to filing a rule with the Secretary of State, submit to the Fiscal Review Committee (FRC) and Government Operations Committees of the Senate and House of Representatives (GOC) an economic impact analysis of the non-emergency rule on persons residing in or doing business in the state and who are subject to compliance with the rule. Authorizes the GOC to request the preparation of an independent economic impact analysis be conducted by the FRC. Establishes where costs associated with such analysis will be borne in certain circumstances.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – \$741,200/Recurring/Fiscal Review Committee

Increase State Expenditures – \$330,000/One-Time/General Fund

\$5,213,600/Recurring/General Fund

\$370,600/Recurring/General Assembly

Exceeds \$100,000/One-Time/Fiscal Review Committee

Exceeds \$741,200/Recurring/Fiscal Review Committee

Assumptions relative to state agencies:

- Pursuant to the 2006 Executive Order Number 38 by former Governor Bredesen, state agencies were required to, prior to initiating a rulemaking process, conduct a review of whether any rule under consideration affects small businesses. As part of such review, each agency was required to prepare an economic impact statement regarding a rule's impact on small businesses.
- Public Chapter 464 of the Public Acts of 2007 enacted the *Regulatory Flexibility Act* of 2007 (Tenn. Code Ann. §§ 4-5-401 through 4-5-404), to essentially codify the intent of the executive order. Pursuant to the Act, each state agency is required to prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses. This requirement does not apply to emergency rules, rules that are federally mandated, or rules that substantially codify existing state or federal law. The economic impact statement is required to include the following:

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- The type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;
 - The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule;
 - A statement of the probable effect on impacted small businesses and consumers;
 - A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small businesses;
 - A comparison of the proposed rule with any federal or state counterparts; and
 - Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.
- The proposed legislation requires each agency to prepare an economic impact analysis of a rule, excluding emergency rules, under consideration on persons residing in or doing business in this state. While the term “economic impact analysis” is not defined in the proposal, it is assumed to generally mean an estimate of the cost or economic benefit to residents and businesses that may be affected by a rule under consideration. At a minimum, the analysis will include: the number of businesses or other entities to which the rule would apply; projected number of persons and employment positions to be affected; the impact of regulation on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations.
 - The economic impact analysis required by this proposal represents a significant addition to the scope and content of current analysis prepared by state agencies, as it is substantially more demanding than the small business economic impact analysis conducted pursuant to the *Regulatory Flexibility Act*.
 - According to the Secretary of State’s Office, there were a total of 268 non-emergency rule filings in 2017 and a total of 258 filings in 2016. Such filings are not uniformly distributed across all agencies and across all years. For example, the Department of Environment and Conservation had 16 filings in 2016 and 34 in 2017, while the Department of Financial Institutions had 1 filing in 2016 and 3 in 2017. Further, 11 out of 44 agencies that filed non-emergency rules in 2017 accounted for approximately 68 percent of total rules filed.
 - For the purposes of this fiscal analysis, the average of the two-year period was used for each agency. It is assumed that agencies will need an additional position for every three annual filings. Those agencies with less than three filings per year are assumed to be able to conduct economic impact analyses utilizing existing resources without a significant increase in state expenditures.
 - The total number of additional positions that will be required across all agencies is estimated to be 66. The recurring increase in state expenditures associated with such positions is estimated to be \$4,843,014 [(\$55,000 salary + \$16,379 benefits + \$2,000 other) x 66 positions]. The one-time increase in state expenditures for computers, equipment, and related items to conduct the research required by the proposed legislation is estimated to be \$330,000 (\$5,000 x 66 positions).

Impact on the Fiscal Review Committee:

- The proposed legislation will also require the FRC to conduct economic impact analysis on non-emergency rules under consideration, when requested by the Chairs of the Government Operations Committees, or majority of the members of either committee.
- If the economic impact analysis conducted by the FRC varies by less than ten percent of the agency's analysis, the cost of the FRC conducting the analysis will be paid by the General Assembly. If the economic impact analysis conducted by the FRC varies by ten percent or more from the agency's analysis, the cost of the FRC conducting the analysis will be paid by the agency.
- The FRC's operational budget is separate from the General Assembly or the General Fund. Any costs paid by the General Assembly or an agency will be considered revenue to the FRC budget.
- The extent of the analysis that will be required under this proposal will require additional staffing for the FRC. Further, the analysis required by the proposal is likely not feasible during a legislative session without a significant disruption to the delivery of fiscal notes and fiscal memorandums, due to the diversion of staff resources.
- Assuming that FRC will be requested to conduct economic impact analysis on at least ten percent of filed rules, or a minimum 26 rules per year, the FRC will require seven additional fiscal analyst 2 positions, who will conduct the analyses, and one additional fiscal analyst 3 position, who will supervise, assist in, and review the preparation of such analyses.
- The recurring increase in state expenditures associated with the fiscal analyst 2 positions is estimated to be \$513,653 [(\$55,000 salary + \$16,379 benefits + \$2,000 other) x 7 positions]. The one-time increase in state expenditures for computers, equipment, and related items to conduct the research required by the proposed legislation is estimated to be \$35,000 (\$5,000 x 7 positions).
- The recurring increase in state expenditures associated with the fiscal analyst 3 position is estimated to be \$102,527 (\$80,000 salary + \$20,527 benefits + \$2,000 other). The one-time increase state expenditures associated with this position is estimated to be \$5,000.
- The one-time increase in state expenditures for equipment and related items to conduct the research required by the proposed legislation, as well as develop invoice and time tracking capabilities necessary to properly bill state agencies for any cost incurred by the FRC, that will be borne by the agencies, is estimated to be \$10,000.
- The FRC will also need to hire an outside consultant with experience in economic impact and cost-benefit analysis to assist staff in: identification of relevant factors to be considered in economic impact analyses; collection of data through various means, including surveys of affected entities; estimation of economic costs or benefits through various appropriate pricing methods; and other aspects of conducting a sound economic impact analysis. The average recurring increase in state expenditures for an outside consulting contract is estimated to be \$75,000.
- The FRC does not have sufficient office space to accommodate the addition of eight additional analysts. Future accommodations for such analysts, as well as any one-time and recurring costs associated with their placement, are unknown and cannot be

quantified with reasonable certainty. However, it is reasonably estimated that at least \$50,000 in one-time costs and \$50,000 in recurring expenditures would be incurred.

Assumptions relative to total impact:

- The total one-time increase in state expenditures to the FRC is estimated to exceed \$100,000 (\$35,000 fiscal analyst 2 equipment + \$5,000 fiscal analyst 3 equipment + \$10,000 invoice and time tracking + \$50,000 new office placement). It is assumed that such costs will be borne by the FRC.
- The total recurring increase in state expenditures to the FRC is estimated to exceed \$741,180 (\$513,653 fiscal analyst 2 salaries and benefits + \$102,527 fiscal analyst 3 salary and benefits + \$75,000 consulting contract + \$50,000 new office placement). It is assumed that 50 percent of such costs will be borne by the General Assembly and 50 percent will be borne by various state agencies. For the purposes of this fiscal analysis, any costs to state agencies are identified as an increase in state expenditures from the General Fund.
- Therefore, the recurring increase in state expenditures to the General Assembly is estimated to be \$370,590 (\$741,180 x 50%); the recurring increase in state expenditures to the General Fund is estimated to be \$370,590 (\$741,180 x 50%).
- Payment to the FRC by the General Assembly and agencies will result in an equal and corresponding recurring increase in state revenue to the FRC is \$741,180.
- The total one-time increase in state expenditures to the General Fund is estimated to be \$330,000; the total recurring increase in state expenditures to the General Fund is estimated to be \$5,213,604 (\$4,843,014 state agency salaries + \$370,590 agency cost for FRC analysis).
- The Government Operations Committees will conduct reviews of economic impact analyses in the regular course of business without requiring any additional meetings.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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